

**Congress of the United States**  
Washington, DC 20515

September 15, 2020

Administrator Andrew Wheeler  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460

Dear Administrator Wheeler,

We write to express disappointment and concern with the Environmental Protection Agency's (EPA) failure to cooperate with the Government Accountability Office (GAO) as part of its ongoing investigation into the approval of small refinery exemption waivers. With that, we urge you to immediately comply with their requests for documentation related to the consideration of these waivers.

As you are well-aware, the EPA has approved an unprecedented number of small refinery exemption waivers under the current Administration. After seeing the devastating consequences of this policy, we sent a letter to the GAO requesting a review of your agency's processes for granting small refinery exemption waivers.

We called for this investigation not only out of concern for our farmers and rural communities, but also due to the lack of transparency surrounding the analysis and approvals of these waivers. You and your predecessor Mr. Pruitt, as well as other members of the current Administration, have repeatedly failed to explain this exponential increase. We hoped that an independent investigation would finally bring the facts to light, but it seems that issues with transparency at the EPA persist.

The GAO recently alerted our offices that the EPA has not been forthcoming with investigators. We understand that the GAO has requested the administrative records for all exemption petitions, including the documents that EPA receives from small refineries petitioning for these exemptions, documentation of Department of Energy (DOE) and EPA analysis and consideration of this information, and documentation supporting EPA's final decisions on such petitions since the start of the program in 2011. The GAO has also requested company-level compliance credit trade data to provide visibility into compliance costs as well as documentation from DOE directly.

For several months now, the GAO has repeatedly sought this information from the EPA, first on May 28, 2020 and again on July 8, 2020 and July 16, 2020. Most recently, in a letter sent on

August 3, 2020, the GAO's General Counsel asked that the EPA provide such documentation by August 17, 2020, a deadline which your agency has ignored.

Our understanding is that the EPA has failed to turn over these records and documentation on account of the request being overly burdensome because the information includes what the EPA considers to be Confidential Business Information (CBI). As such, the EPA insists it must first go through a lengthy clearance process involving notification of and consultation with each refiner prior to release of the information to GAO. Apparently, this process can take months and depending on the outcome of their consultation with refiners, may ultimately lead to the EPA not providing access to certain documents whatsoever.

Your agency, however, is required to provide the GAO with access to this information without delay per the general statutory access authority of the GAO and as described in EPA's CBI regulations (see 40 CFR Subpart B Section 2.209 (b) on disclosure to Congress or the Comptroller General). EPA's CBI regulations at § 2.209(b) describe a process of notifying businesses, but do not describe any conditions under which access would not be provided. It is this disregard for well-established federal authorities surrounding disclosure and transparency that have led to the involvement of the GAO General Counsel and now members of Congress in ensuring your compliance with this investigation.

Ignoring the GAO's statutory authority to access the records without delay jeopardizes the completion of this investigation and belies a concerted effort to evade oversight and accountability. As such, we instruct you to provide all data, documents, correspondence, and other information requested to the GAO by September 30, 2020 and confirm with the signatories of this letter once you have fully complied with their request. If you have any questions, please contact Steffanie Bezruki at [steffanie.bezruki@mail.house.gov](mailto:steffanie.bezruki@mail.house.gov).

Sincerely,

/s/  
Abby Finkenauer  
United States Representative

/s/  
Cheri Bustos  
United States Representative

/s/  
Cindy Axne  
United States Representative

/s/  
Joni K. Ernst  
United States Senator

/s/  
Frank Pallone, Jr.  
United States Representative

/s/  
Collin C. Peterson  
United States Representative

/s/  
Dave Loebsack  
United States Representative